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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,086	02/13/2006	Hans Hallstadius	05049.0006	7479
22852 7590 05/07/2008 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER CHRISTIAN, MARJORIE ELLEN	
			ART UNIT 4112	PAPER NUMBER
			MAIL DATE 05/07/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,086

Applicant(s)

HALLSTADIUS ET AL.

Examiner

MARJORIE CHRISTIAN

Art Unit

4112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/13/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Claims 1-15, drawn to an apparatus for measuring an optically active substance in dialysis and/or infusion fluid.
 - II. Claims 16-27, drawn to method for measuring an optically active substance in a fluid through an apparatus for hemodialysis, hemodialfiltration, hemofiltration or peritoneal dialysis.
2. The inventions listed as Groups I and II do not relate to a single general inventive concept (*a posteriori*) under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the common technical feature is measuring the optically active substance in a dialysis and/or infusion fluid using a polarized beam of light. This apparatus cannot be a special technical feature under PCT Rule 13.2 because the apparatus is taught in the prior art.
 3. Specifically, Schmidtke et al., US Patent No. 5,457,535 (herein referred to as SCHMIDTKE) teaches the common technical feature.

Referring to Claim 1, SCHMIDTKE teaches: a carrier fluid containing a substance whose concentration is to be identified, such as a dialysis product (Column 3, Lines 43-45) [*dialysis and/or infusion fluid*]; a cuvette with two chambers where these chambers are provided with inlets and outlets to permit the fluids to flow (Column 3, Lines 38-48) [*conduit where fluid flows*]; an apparatus for undertaking a quantitative determination of the concentration of optically refracting and optically absorbing substances in a carrier fluid (Column 3, Lines 8-11) also shown in Figure 1 referenced as 10 "cuvette", 1 and 21 "light source", 31 "beam splitter", and 54 "line detector for the light source sent through the carrier fluid" [*measurement unit*]; and the use of polarimetry techniques for the quantitative determination of the concentration of optically-active substances in a carrier, such as glucose (Column 1, Lines 11-15) [*measuring optically active substance using polarized beam of light*].

4. A telephone call was made to Mr. Aaron L. Parker on 4/30/2008 to request an oral election to the above restriction requirement, but did not result in an election being made.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARJORIE CHRISTIAN whose telephone number is (571)270-5544. The examiner can normally be reached on Patent Training Academy, Monday through Thursday 8-5pm (Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Barbara Gilliam can be reached on (571)272-1330. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MC

/Barbara L. Gilliam/
Supervisory Patent Examiner, Art Unit 4128